

## 48A C.J.S. Judges § 201

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### B. Amount

#### 2. Change in Amount During Term of Office

##### b. Restrictions Against Altering Compensation During Term

## § 201. Character of compensation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(7)

**The prohibition against changing the compensation of judges applies to a reduction of additional, or a reduction of an increase in, compensation, but a statute providing for an automatic increase or decrease in compensation during the term of the judge is effective as to a judge whose term commenced after its effective date.**

The prohibition against changing the compensation of judges applies to a reduction of additional compensation.<sup>1</sup> The reduction of an increase in compensation is just as illegal as a reduction of the original compensation when the power to decrease the compensation of a judge does not exist.<sup>2</sup> Where the salary of a particular judge is fixed by reference to the salary of another judge, and during the former's term of office the salary of the other judge is lawfully increased, payment of the increased sum to the former does not constitute a violation of the constitutional prohibition.<sup>3</sup>

Some statutes provide for an automatic increase or decrease in salaries during the term by reason of increase or decrease of the population or of the valuation of the taxable property as shown by a later census or tax duplicate, and a question arises as to the effect of such a statute where a constitutional provision forbids an increase or decrease in salary during the judge's term of office; such a statute has no application to a judge whose term of office commences before the act becomes effective.<sup>4</sup> The constitutional inhibition is directed to the legislature and means that the legislature shall not by legislative act during the term of office change the compensation, but it does not prohibit the legislature from fixing such compensation before the term begins on a basis which may vary in amount as time advances provided that the basis is fixed, certain, and unchangeable during the judge's term.<sup>5</sup> Accordingly, such a statute is valid and effective as to a judge whose term commences after its effective date.<sup>6</sup>

The Compensation Clause of the Federal Constitution provides that judges' salaries shall not be diminished during their continuance in office,<sup>7</sup> and not only protects the judicial compensation that has already taken effect but also reasonable expectations of maintenance of that compensation level.<sup>8</sup> Congress has the authority to block cost-of-living pay increases that would increase judicial compensation.<sup>9</sup> If Congress wishes to prevent a planned increase in judicial compensation, it must do so before the date that the pay increase becomes actually due and payable as part of the judges' compensation package.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

State's contribution to cost of state judges' health care insurance premiums is not judicial "compensation" protected from direct diminution by state Constitution's Judicial Compensation Clause; such contribution is not part of a judicial salary, nor a permanent remuneration for expenses necessarily incurred in fulfillment of judicial obligations. [McKinney's Const. Art. 6, § 25\(a\)](#); [McKinney's Civil Service Law § 167\(8\)](#). [Bransten v. State](#), 30 N.Y.3d 434, 68 N.Y.S.3d 19, 90 N.E.3d 818 (2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 N.C.—[Buxton v. Rutherford County Com'rs](#), 82 N.C. 91, 1880 WL 3124 (1880).
- 2 U.S.—[Booth v. U.S.](#), 291 U.S. 339, 54 S. Ct. 379, 78 L. Ed. 836 (1934).
- 3 Ala.—[Pruett v. Delony](#), 289 Ala. 578, 269 So. 2d 109 (1972).  
  
Ind.—[Matter of Public Law No. 305 and Public Law No. 309 of Indiana Acts of 1975](#), 263 Ind. 506, 334 N.E.2d 659 (1975).  
  
Tenn.—[State ex rel. Boone v. Torrence](#), 63 Tenn. App. 224, 470 S.W.2d 356 (1971).
- 4 Ohio—[State ex rel. Mack v. Guckenberger](#), 139 Ohio St. 273, 22 Ohio Op. 311, 39 N.E.2d 840, 139 A.L.R. 728 (1942).
- 5 Ohio—[State ex rel. Mack v. Guckenberger](#), 139 Ohio St. 273, 22 Ohio Op. 311, 39 N.E.2d 840, 139 A.L.R. 728 (1942).
- 6 Idaho—[Higer v. Hansen](#), 67 Idaho 45, 170 P.2d 411 (1946).  
  
Ohio—[State ex rel. Mack v. Guckenberger](#), 139 Ohio St. 273, 22 Ohio Op. 311, 39 N.E.2d 840, 139 A.L.R. 728 (1942).
- 7 U.S. Const. Art. III, § 1.
- 8 [Beer v. U.S.](#), 696 F.3d 1174 (Fed. Cir. 2012), cert. denied, 133 S. Ct. 1997, 185 L. Ed. 2d 866 (2013).
- 9 U.S.—[U. S. v. Will](#), 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).
- 10 U.S.—[U. S. v. Will](#), 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).

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